IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved fore reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case
Criminal Misc Application No. 846/01

Ram Khilawan Yadav

Vs

State & another

Date of decision :- 13.7.2005

~~A.F.R. (Approved for Reporting)~~

Not approved for reporting

Date :- 13.7.2005 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.846 of 2001
{Old No. 10452 of 1989}

Ram Khilawan Yadav
S/o Sri Rattan Lal
R/o 42 Vivek Vihar
Village Kanwali
P.S. Kotwali
District Dehradun .....Applicant

Versus

1. State of Uttaranchal
2. Addl. Sessions Judge,
   Dehradun

.....Respondents

Date:- 13th July, 2005

Hon'ble J.C.S. Rawat, J.

The petition under section 482 Cr.P.C. was filed with the prayer to direct the court below to transfer the S.T. No.51-A/1989 State VS. Ram Khilawan & another pending in the court of Addl. Sessions Judge, Dehradun to the Juvenile Court for trial or inquiry in accordance with the provision of the Juvenile Justice Act 1986.

The factual position in a nutshell is that the FIR was lodged on 9.3.1987 by one-Chotey Lal against the applicant and others alleging therein the applicant & others picked a quarrel with the members of a marriage party, which resulted a death of a person due to head injury. On the basis of said FIR, a criminal case No.13/143 of 1987 under section 308, 304 IPC was registered against the applicant & others at police station Kotwali, Dehradun. The applicant was taken into custody by the police on 9.3.1987 in connection with the aforesaid crime. The chargesheet was submitted after investigation. On 7.9.1988 the applicant moved an application before the Addl. Sessions Judge alleging therein that he was under 16 years of age at the time of alleged incident. It was further alleged that the

applicant was minor at the time of incident as the date of birth of the applicant is 5th Sept. 1971. The applicant has also filed the school-leaving certificate in which his date of birth has been shown as 5.9.1971 and as such he is governed by the provisions of Juvenile Justice Act 1986. After hearing the parties, the learned Addl. Sessions Judge instead of transferring the case of the applicant to the Children Court for enquiry and trial in accordance with the provisions of Juvenile Justice Act 1986, directed separate trial of the applicant. The learned Addl. Sessions Judge further held that the court of Sessions is competent to try the accused and the trial of the accused was separated from other co-accused. Thereafter, it was registered as S.T. No.51-A of 1989. Feeling aggrieved this, the present petition has been filed.

Heard Sri B.P. Nautiyal learned counsel for the applicant and learned A.G.A. for the State.

The Juvenile Justice Act, 1986 defines the word "Juvenile" as :- "*a boy who has not attained that age of sixteen years or a girl who has not attained the age of eighteen years".* It is an admitted case that the offence was committed after the enforcement of the Juvenile Justice Act 1986 ad it is also proved from the record that the date of birth of the applicant is 5th Sept. 1981. As such, the applicant was aged about 15 years & six months at the time of commission of offence.

The Juvenile Justice Act 1986 was enacted to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to, and disposition of, delinquent juveniles. Section 5 of Juvenile Justice Act 1986 provides (i) Notwithstanding anything contained in the Cr.P.C. 1973, the State

Government may, by notification in the Official Gazettee; constitute for any area specified in the notification, one or more Juvenile Courts for exercising the powers and discharging the duties conferred or imposed on such Court in relation to delinquent juveniles under this Act. Chapter 4 of the said Act clearly provides that how the cases of the juveniles will be tried and what type of punishment will be provided for the juveniles. It is further provided under section 3 of the Act that where an inquiry has been initiated against a juvenile and during the course of such inquiry the juvenile ceases to be such, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued and orders may be made in respect of such person as if such person had continued to be a juvenile. The Juvenile Justice Act 1986 is a Special Act and the provisions of the Special Act will override the provisions of the General Law. The accused was juvenile at the time of enforcement of the Juvenile Justice Act 1986. Therefore, the learned Addl. Sessions Judge has committed an error in holding that the trial of the juvenile would be conducted by the court of Sessions. As per the provisions of the Juvenile Justice Act 1986, the accused should have been referred to the Juvenile Court.

In view of Section 20 of the Juvenile Justice Act 1986, the applicant should have been directed to appear before the Juvenile Court and the Juvenile Court, then, had to hold the inquiry in accordance with the section 39 of the Act.

In view of the above, I find that the order of the Addl. Sessions Judge is not sustainable. Therefore, the order dated 2.2.1986 passed by the learned Sessions

Judge is set-aside. The applicant is directed to appear before the learned Juvenile Court concerned on 22nd August 2005 for the purpose of trial or inquiry in accordance with the provision of the Juvenile Justice Act 1986.

The petition is disposed accordingly.

(J.C.S. Rawat, J.)

Dated 13.7.2005

LSR